IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 796 of 2007()

CC.662/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA

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PETITIONER: PETITIONER/ACCUSED

K.S.VIDYADHARAN,S/O.SUKUMARAN,KALACKAL
PARAMBIL VEEDU,WARD NO.14,ARYAD NORTH VILLAGE,
ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. VARGHESE THONDIYIL,THONDIYIL VEEDU,
VAZHICERRY WARD,ALAPPUZHA.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI.K.S.SAJEEV KUMAR
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.796 of 2007

Dated this the 21st day of March 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The sentence was modified and the petitioner now faces a sentence of imprisonment till rising of court. There is a further direction to the petitioner "to pay" an amount of Rs.85,000/- as compensation and in default to undergo S.I for a period of two months. The petitioner was directed to appear before the learned Magistrate on 15/11/2006. He did not pay the amount. He had sought for extension for time. Extension of time was granted subject to conditions. He has deposited an amount of Rs.30,000/-. The balance amount was not paid. According to the petitioner, he has paid the balance amount to the complainant. The complainant has agreed to accept the same and has actually received the same. No amount remains to be paid now. The balance amount to be paid is only Rs.30,000/- which has already been deposited before the learned Magistrate.

2. The petitioner apprehends that in as much as he has not appeared before the learned Magistrate on the date specified, the learned Magistrate may execute the default sentence against him.

3. The apprehension is misplaced. The position has been clarified in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16]. The petitioner has already deposited Rs.30,000/- in pursuance of the directions and has allegedly paid the entire balance amount. If it be so, there can be no question of executing the default sentence against the petitioner.

4. The petitioner can appear before the learned Magistrate and report to the learned Magistrate that an amount of Rs.30,000/- has been deposited and the entire balance has been paid to the complainant and received by him. If the petitioner and the complainant can satisfy the learned Magistrate of that fact, there can be no question of executing the default sentence. If the learned Magistrate is satisfied, the learned Magistrate shall execute the substantive sentence of imprisonment till rising of court and shall not execute the default sentence. The amount in deposit shall be released to the complainant forthwith.

5. This Criminal Miscellaneous Case is in these circumstances allowed in part to the above extent.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006